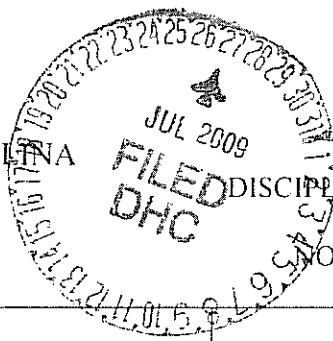


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 19

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

D. BERNARD ALSTON, Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of the Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("Plaintiff" or "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the rules and regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, D. Bernard Alston ("Defendant" or "Alston"), was admitted to the North Carolina State Bar on August 24, 1985, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

Upon information and belief:

3. During part of the relevant periods referred to herein, Alston was engaged in the practice of law in the State of North Carolina and maintained a law office in Henderson, Vance County, North Carolina.

4. During part of the relevant periods referred to herein, Alston was suspended from the active practice of law in the State of North Carolina pursuant to the Order of Discipline issued by the Disciplinary Hearing Commission in case number 07 DHC 21 dated April 17, 2008 (hereinafter "Order of Discipline").

FIRST CLAIM FOR RELIEF

5. Paragraphs 1 – 4 are re-alleged and fully incorporated as if set out herein.

6. Thomas Williams ("Williams") retained Alston in or around March 2007 to represent him in a civil action.

7. In or around late March or early April 2007, Alston and Williams met to review a draft of the complaint.

8. Alston did not file the complaint on Williams' behalf until May 27, 2008.

9. Alston failed to communicate with Williams about the manner in which Williams' objectives would be pursued, to wit: Alston did not notify Williams that he was going to file a complaint or that a complaint had been filed on his behalf.

10. At the time Alston filed the complaint, the Disciplinary Hearing Commission of the State Bar had entered the Order of Discipline suspending Alston from the active practice of law. On or about April 24, 2008, Alston was served with the Order of Discipline, which allowed Alston sixty days from the date of service to wind-down his practice before the active suspension went into effect.

11. On or about June 23, 2008, Alston's law license was suspended pursuant to the Order of Discipline.

12. On or about June 23, 2008, Alston withdrew as the attorney of record from Williams' matter.

13. Alston did not notify Williams that his license was going to be suspended and that he intended to withdraw from representation.

14. Alston did not obtain permission from Williams to withdraw from representation or notify Williams when he actually withdrew from the representation.

15. The complaint filed by Alston on behalf of Williams was subsequently dismissed for Williams' failure to prosecute the action.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to file the complaint for approximately fourteen months after initially reviewing a draft with Williams, Alston failed to pursue the matter for which he was retained with reasonable diligence and promptness in violation of Rule 1.3;
- (b) By failing to keep Williams informed about the status of his case and failing to inform Williams that the complaint had been filed, Alston failed to keep the client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3); and
- (c) By failing to notify Williams of his intent to withdraw as well as his actual withdrawal from representation, Alston failed to take steps to the extent reasonably practicable to protect his client's interests in

violation of Rule 1.16(d) and failed to keep the client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3).

SECOND CLAIM FOR RELIEF

16. Paragraphs 1 – 15 are re-alleged and incorporated as if fully set out herein.
17. In or around November 2001, Genevieve Steverson (“Steverson”) retained Alston for representation in a personal injury matter.
18. Alston met with Steverson several times to discuss the case, but over the course of representation Alston ceased contact with Steverson.
19. Steverson made appointments to meet with Alston about her case. Alston did not appear for the appointments.
20. Steverson called and left numerous messages with Alston’s law office requesting an update on the status of her case as well as a chance to speak with Alston. Alston failed to return Steverson’s telephone calls.
21. On or about November 9, 2004, Alston filed a complaint on Steverson’s behalf.
22. On or about February 20, 2005, the opposing party in Steverson’s action filed a motion to compel based upon Alston’s failure to respond to the opposing party’s discovery requests. The motion to compel was granted on or about March 14, 2005, and Alston was required to respond to the discovery requests by April 1, 2005.
23. Alston did not respond to the opposing party’s discovery requests as ordered by the court.
24. On or about July 25, 2005, Alston filed a voluntary dismissal of Steverson’s complaint.
25. Alston did not notify Steverson that he filed a complaint on her behalf, that he failed to respond to the discovery requests, or that he voluntarily dismissed her case.
26. On or about July 24, 2006, Alston re-filed the complaint on Steverson’s behalf.
27. On or about November 5, 2007, the complaint was dismissed due to Alston’s failure to perfect service.
28. Alston did not notify Steverson that he re-filed the complaint or that the complaint was dismissed due to his failure to perfect service.

29. In or around June 2007, Steverson contacted the State Bar's Attorney-Client Assistance Program ("ACAP") concerning Alston.

30. A public liaison with ACAP attempted to contact Alston by phone and written correspondence on or around June 28, 2007 and July 24, 2007 concerning his representation of Steverson.

31. Alston failed to respond to phone messages and written correspondence from ACAP staff.

32. On or about May 20, 2008, Steverson filed a grievance with the State Bar against Alston, grievance file no. 08G0665.

33. On or about June 26, 2008, the State Bar sent a Letter of Notice to Alston by certified mail regarding grievance file no. 08G0665. Alston accepted service of the Letter of Notice on or about July 8, 2008.

34. On or about July 24, 2008, Alston responded to the Letter of Notice and admitted the allegations made by Steverson concerning Alston's neglect of her case were true.

35. On or about July 30, 2008, the State Bar sent Alston a follow-up letter asking for additional information and asking Alston to provide copies of various documents concerning his representation of Steverson. Alston's response to this supplemental request for information was due on or before August 15, 2008.

36. Alston failed to respond to the State Bar's July 30, 2008 request for additional information and documentation.

37. On or about November 6, 2008, the State Bar sent Alston a letter by certified mail again asking for his response to the July 30, 2008 letter and enclosing another copy of that letter. Alston's response was due twenty days from receipt of the letter. Alston accepted service of this letter on or about November 20, 2008.

38. Alston did not respond within twenty days of receipt of the November 6, 2008 letter as required.

39. On or about January 30, 2009, the State Bar sent Alston a third letter by certified mail again asking for his response to the July 30, 2008 letter. This letter was sent to Alston's address of record in the membership database of the State Bar, as were the letters sent on June 26, 2008, July 30, 2008 and November 6, 2008. Alston was instructed to contact Deputy Counsel to discuss the matter within two days from receipt of the letter.

40. Additionally, the January 30, 2009 letter was sent to an address on West Belle Street in Henderson, North Carolina, which had recently been used by the Client Security Fund of the State Bar to successfully correspond with Alston.

41. The January 30, 2009 letter sent by certified mail to Alston's address of record was returned to the State Bar as "undeliverable."

42. The January 30, 2009 letter sent to the West Belle Street address was not returned to the State Bar.

43. Alston failed to respond to the State Bar's January 30, 2009 letter.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and 84-28(b)(3) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to consult with Steverson before voluntarily dismissing her claim in 2005, Alston failed to consult with his client as to the means by which the client's objective was to be accomplished in violation of Rules 1.2(a) and 1.4(a)(2);
- (b) By failing to respond to discovery requests and timely serve the complaint on Steverson's behalf, Alston failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- (c) By failing to inform Steverson that complaints were filed on her behalf and subsequently dismissed, by failing to respond to Steverson's telephone calls and keep appointments made by Steverson, and by failing to communicate with Steverson in any meaningful way regarding the status of her case, Alston failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4); and
- (d) By failing to respond to the State Bar's letters dated July 30, 2008, November 6, 2008, and January 30, 2009, Alston failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).

THIRD CLAIM FOR RELIEF

44. Paragraphs 1 – 43 are re-alleged and fully incorporated as if set out herein.

45. In or around May 2007, Elizabeth Billups ("Billups") retained Alston to represent her in a criminal matter. Billups paid Alston \$500 for the representation.

46. Between May 2007 and September 2008, Billups made numerous attempts to contact Alston to learn the status of her case, including but not limited to telephone calls and messages, as well as in-person visits to Alston's office.

47. Alston did not return Billups' telephone calls and was unable to provide any information to Billups about her case when she appeared at his office.

48. On or about September 4, 2008, Billups wrote a letter to Alston requesting a copy of her client file.

49. Alston failed to respond to Billups' September 4 letter and failed to provide Billups with the requested copy of her client file.

50. On or about September 8, 2008, Billups filed a Petition for Resolution of Disputed Fee ("Billups fee dispute") with the State Bar, file no. 08FD0527.

51. On or about September 16, 2008, the State Bar sent a Notification of Mandatory Fee Dispute Resolution to Alston regarding the Billups fee dispute by certified mail. Alston received this Notification on or about September 29, 2008, and was required to provide a response to the Notification within fifteen days of receiving the letter.

52. Alston failed to timely respond to the Notification as required. Despite missing the deadline, Alston provided a response to the Notification on or about October 14, 2008.

53. Based upon the information gathered by the State Bar during the fee dispute process, on or about October 22, 2008 the State Bar requested by letter that Alston partially refund Billups' paid legal fee. Alston was required to respond to the State Bar's request on or before November 3, 2008.

54. Alston failed to respond by November 3, 2008 as instructed.

55. The State Bar subsequently opened a grievance file against Alston, grievance file no. 08G1391, based upon his representation of Billups and his failure to participate in good faith in the Billups fee dispute by failing to respond to the State Bar's October 22, 2008 letter.

56. On or about December 8, 2008, the State Bar sent a Letter of Notice to Alston by certified mail regarding grievance file no. 08G1391. Alston accepted service of the Letter of Notice on or about December 10, 2008, and was required to respond to the Letter of Notice within fifteen days of receiving the letter.

57. Alston failed to respond to the Letter of Notice within the fifteen day period as required.

58. On or about January 30, 2009, the State Bar sent Alston a follow-up letter by certified mail instructing Alston to contact the State Bar within two days from receipt of the letter to discuss the pending grievance. This letter was sent to Alston's address of record in the membership database of the State Bar, as was the Letter of Notice sent on December 8, 2008.

59. Additionally, the January 30, 2009 letter was sent to an address on West Belle Street in Henderson, North Carolina, which had recently been used by the Client Security Fund of the State Bar to successfully correspond with Alston.

60. The January 30, 2009 letter sent by certified mail to Alston's address of record was returned to the State Bar as "undeliverable."

61. The January 30, 2009 letter sent to the West Belle Street address was not returned to the State Bar.

62. Alston failed to respond to the State Bar's January 30, 2009 letter.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and 84-28(b)(3) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to respond to Billups' attempts at communication, by failing to provide Billups with a status update concerning her case, and by failing to notify Billups of his impending suspension from the practice of law, Alston failed to keep his client reasonably informed about the status of a matter and failed to comply with reasonable requests for information in violation of Rules 1.4(a)(3) and 1.4(a)(4);
- (b) By failing to provide Billups with a copy of her client file upon request, Alston failed to surrender property to which his client was entitled in violation of Rule 1.16(d);
- (c) By failing to respond to the State Bar's October 22, 2008 supplemental request for a response in the Billups fee dispute, Alston failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f); and
- (d) By failing to respond to the State Bar's Letter of Notice dated December 8, 2008 and follow-up letter dated January 30, 2009, Alston failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).

FOURTH CLAIM FOR RELIEF

63. Paragraphs 1 – 62 are re-alleged and fully incorporated as if set out herein.

64. On or about May 30, 2007, Monica Sadler ("Sadler") retained Alston for representation in domestic matters. Sadler paid Alston a total of \$1200 for the representation.

65. Alston did not pursue Sadler's matters for which he was retained.

66. Over the course of the representation, Sadler called Alston numerous times requesting an update on the status of her case. Alston failed to return calls made by Sadler.

67. In or around March and April 2008, Sadler sent two letters to Alston by certified mail requesting Alston contact her concerning her case. Alston accepted service of the letters on April 3 and April 8, 2008, respectively.

68. Alston did not respond to Sadler's letters as requested.

69. After June 2007, Alston did not communicate with Sadler.

70. On or about May 23, 2008, Sadler filed a grievance with the State Bar against Alston, grievance file no. 08G0685.

71. On or about June 26, 2008, the State Bar sent a Letter of Notice to Alston by certified mail regarding grievance no. 08G0685. Alston accepted service of the Letter of Notice on or about July 8, 2008.

72. Alston responded to the Letter of Notice on or about July 24, 2008.

73. On or about July 30, 2008 the State Bar sent Alston a follow-up letter asking for additional information and asking Alston to provide copies of various documents concerning his representation of Sadler. Alston's response to this supplemental request for information was due on or before August 15, 2008.

74. Alston failed to respond to the State Bar's July 30, 2008 request for additional information and documents by August 15, 2008.

75. On or about November 6, 2008 the State Bar sent Alston a letter by certified mail again asking for him to respond to the July 30, 2008 letter and enclosing another copy of that letter. Alston's response was due twenty days from receipt of the letter. Alston accepted service of this letter on or about November 20, 2008.

76. Alston did not respond within twenty days of receipt of the November 6, 2008 letter as required.

77. On or about January 30, 2009, the State Bar sent Alston a third letter by certified mail again asking for his response to the July 30, 2008 letter. This letter was sent to Alston's address of record in the membership database of the State Bar, as were the letters sent on June 26, 2008, July 30, 2008 and November 6, 2008. Alston was instructed to contact Deputy Counsel to discuss the matter within two days from receipt of the letter.

78. Additionally, the January 30, 2009 letter was sent to an address on West Belle Street in Henderson, North Carolina, which had recently been used by the Client Security Fund of the State Bar to successfully correspond with Alston.

79. The January 30, 2009 letter sent by certified mail to Alston's address of record was returned to the State Bar as "undeliverable."

80. The January 30, 2009 letter sent to the West Belle Street address was not returned to the State Bar.

81. Alston failed to respond to the State Bar's January 30, 2009 letter.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and 84-28(b)(3) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By accepting the \$1200 fee and failing to pursue Sadler's domestic matters for which he was retained, Alston failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and collected a clearly excessive fee in violation of Rule 1.5(a);
- (b) By failing to respond to Sadler's telephone calls and letters, Alston failed to keep his client reasonably informed about the status of the matter and failed to comply with reasonable requests for information in violation of Rules 1.4(a)(3) and 1.4(a)(4); and
- (c) By failing to respond to the State Bar's letters dated July 30, 2008, November 6, 2008, and January 30, 2009, Alston failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).

FIFTH CLAIM FOR RELIEF

82. Paragraphs 1 – 81 are re-alleged and fully incorporated as if set out herein.

83. In or around November 2007, Julia Perry ("Perry") hired Alston for representation in a child custody matter. Perry paid Alston \$1500 for the representation.

84. Alston did not pursue Perry's matter for which he was retained.

85. Between November 2007 and May 2008, Perry made numerous attempts to contact Alston to learn the status of her case by calling and leaving messages for Alston. Alston did not return Perry's calls.

86. On or about May 15, 2008, Perry hired new counsel to represent her in the child custody matter. Perry received no assistance from Alston and resolved the matter without Alston's involvement.

87. Alston did not refund any portion of Perry's previously paid legal fee after his suspension went into effect on June 23, 2008.

88. On or about August 18, 2008, Perry filed a Petition for Resolution of Disputed Fee ("Perry fee dispute") with the State Bar, file no. 08FD0481.

89. A Notification of Mandatory Fee Dispute Resolution was sent to Alston by certified mail on or about August 19, 2008. The notice was returned to the State Bar on September 23, 2008 marked "unclaimed."

90. The State Bar subsequently opened a grievance file against Alston, grievance file no. 08G1392, based upon his representation of Perry.

91. On or about December 8, 2008, the State Bar sent a Letter of Notice to Alston regarding grievance file no. 08G1392 by certified mail. Alston accepted service of the Letter of Notice on or about December 10, 2008 and was required to respond to the Letter of Notice within fifteen days of receiving the letter.

92. Alston did not respond to the Letter of Notice within the fifteen day period as required.

93. On or about January 30, 2009, the State Bar sent Alston a follow-up letter by certified mail instructing Alston to contact the State Bar within two days from receipt of the letter to discuss the pending grievance. This letter was sent to Alston's address of record in the membership database of the State Bar, as was the Letter of Notice sent on December 8, 2008.

94. Additionally, the January 30, 2009 letter was sent to an address on West Belle Street in Henderson, North Carolina, which had recently been used by the Client Security Fund of the State Bar to successfully correspond with Alston.

95. The January 30, 2009 letter sent by certified mail to Alston's address of record was returned to the State Bar as "undeliverable."

96. The January 30, 2009 letter sent to the West Belle Street address was not returned to the State Bar.

97. Alston failed to respond to the State Bar's January 30, 2009 letter.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and 84-28(b)(3) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to pursue Perry's matter in any way after receiving payment for representation and failing to refund Perry's fee when his law license was suspended and he was no longer able to provide Perry the legal services for which she had paid, Alston failed to act with reasonable diligence and promptness in representing clients in violation of Rule 1.3 and collected a clearly excessive fee in violation of Rule 1.5(a);

- (b) By failing to respond to Perry's telephone calls and by failing to provide Perry with a status update concerning her case, Alston failed to keep his client reasonably informed and failed to respond to reasonable requests for information in violation of Rules 1.4(a)(3) and 1.4(a)(4); and
- (c) By failing to respond to the State Bar's Letter of Notice dated December 8, 2008 and follow-up letter dated January 30, 2009, Alston failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).

SIXTH CLAIM FOR RELIEF

98. Paragraphs 1 – 97 are re-alleged and fully incorporated as if set out herein.

99. In or around December 2007, Phyllis Dunston ("Dunston") retained Alston to provide criminal representation for her son on traffic and drug-related charges.

100. Dunston paid Alston \$2500 for the legal representation.

101. Alston was successful in obtaining a dismissal for the traffic-related charges, but did not resolve the drug-related charges prior to his license being suspended on June 23, 2008.

102. On July 3, 2008, Alston notified Dunston that he could no longer represent her son against the drug charges due to his license being suspended. This notice was received approximately one week prior to Dunston's son's scheduled trial date.

103. The July 3, 2008 notice was the first received by Dunston informing her that Alston would be unable to assist her son in his remaining criminal charges.

104. Dunston subsequently requested a partial refund of her paid legal fee from Alston. Dunston also sent certified letters to Alston's home and office addresses in an attempt to contact Alston.

105. Alston did not respond to Dunston's attempts at communication.

106. On or about October 1, 2008, Dunston filed a Petition for Resolution of Disputed Fee ("Dunston fee dispute") with the State Bar, file no. 08FD0580.

107. On or about October 1, 2008, the State Bar sent a Notification of Mandatory Fee Dispute Resolution to Alston regarding the Dunston fee dispute by certified mail. The notice was returned to the State Bar marked "unclaimed".

108. The State Bar subsequently opened a grievance file against Alston, grievance file no. 08G1318, based upon his representation of Dunston.

109. On or about November 14, 2008, the State Bar sent a Letter of Notice to Alston by certified mail regarding grievance file no. 08G1318. Alston accepted service of the Letter of Notice on or about November 20, 2008, and was required to respond to the Letter of Notice within fifteen days of receiving the letter.

110. Alston failed to respond to the Letter of Notice within the fifteen day period as required.

111. On or about January 30, 2009, the State Bar sent Alston a follow-up letter by certified mail instructing Alston to contact the State Bar within two days from receipt of the letter to discuss the pending grievance. This letter was sent to Alston's address of record in the membership database of the State Bar, as was the Letter of Notice sent on November 14, 2008.

112. Additionally, the January 30, 2009 letter was sent to an address on West Belle Street in Henderson, North Carolina, which had recently been used by the Client Security Fund of the State Bar to successfully correspond with Alston.

113. The January 30, 2009 letter sent by certified mail to Alston's address of record was returned to the State Bar as "undeliverable."

114. The January 30, 2009 letter sent to the West Belle Street address was not returned to the State Bar.

115. Alston failed to respond to the State Bar's January 30, 2009 letter.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and 84-28(b)(3) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to provide reasonable notice to Dunston that he would no longer be able to represent Dunston's son and thereby not allowing sufficient time for Dunston to retain new counsel before her son's next court date, and by failing to refund an advance payment of fee that had not been earned, Alston failed to take steps to the extent reasonably practicable to protect a client's interests in violation of Rule 1.16(d); and
- (b) By failing to respond to the Letter of Notice dated December 8, 2008 and the State Bar's follow-up letter dated January 30, 2009, Alston failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).

WHEREFORE, Plaintiff prays that:

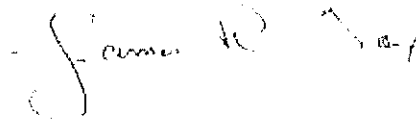
- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the

North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;

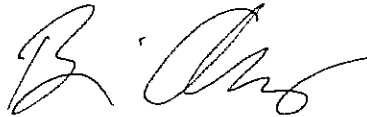
(2) Defendant be taxed with the costs permitted by law in connection with this proceeding; and

(3) For such other and further relief as is appropriate.

This the 27 day of July 2009.



James R. Fox, Chair
Grievance Committee



Brian P.D. Oten
Deputy Counsel
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